

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

JULIE A. SU, Secretary of Labor,
United States Department of Labor,

Plaintiff,

v.

**DAVID FENSLER; JOHN FERNANDEZ;
GARY MEYERS; L. STEVEN PLATT;
HERBERT O. MCDOWELL III;
DAVID SCHWALB; ROBBINS,
SALOMON, & PATT, LTD.;
ROBBINS DIMONTE, LTD.; UNITED
PREFERRED COMPANIES, LTD.;**
and the **UNITED EMPLOYEE BENEFIT
FUND TRUST;**

Defendants.

Case No. 1:22-cv-01030

Hon. Nancy L. Maldonado

**ACTING SECRETARY'S
MOTION TO APPROVE CONSENT ORDER AND JUDGMENT**

Plaintiff Acting Secretary of Labor, United States Department of Labor (“Acting Secretary”), by counsel, pursuant to Federal Rule of Civil Procedure 54 respectfully requests this Court enter the proposed Consent Order (attached to this Motion). The Acting Secretary’s counsel conferred with Defendant Schwalb’s counsel on December 8 and 11, 2023, and this Motion is unopposed as to Defendant Schwalb and additionally unopposed as to the Independent Fiduciary acting on behalf of the United Employee Benefit Fund. The Acting Secretary conferred with the other Defendants¹ about the filing of this Motion on December 8, 2023, and only Defendants Meyers and Fernandez indicated they may take a position on the Motion, but at the time of filing of this Motion they did not indicate their position to the Acting Secretary.

¹ Counsel for Mr. McDowell did not attend the call where positions on the motion were discussed, but the Acting Secretary was able to confirm later on December 8, 2023 that Defendant McDowell does not oppose this Motion.

Defendants Herbert McDowell III, David Fensler, L. Steven Platt, Robbins, Salomon & Patt, Ltd., and Robbins Dimonte, Ltd., did not object. In support of the *Acting Secretary's Motion to Approve Consent Order and Judgment*, the Acting Secretary states as follows:

1. On February 28, 2022, the Acting Secretary filed a Complaint against Defendants David Fensler, John Fernandez, Gary Meyers, L. Steven Platt, Herbert O. McDowell III, David Schwalb (“Schwalb”), Robbins, Salomon, & Patt, Ltd., Robbins DiMonte, Ltd., United Preferred Companies, Ltd., and the United Employee Benefit Fund Trust (“Fund”) (collectively, “Defendants”), for violations of Title I of the Employee Retirement Income Security Act of 1974 (“ERISA”), as amended, 29 U.S.C. § 1001, *et seq.* (ECF 1).

2. On May 24 and May 25, 2023, all parties attended a mediation with JAMS mediator Robert Meyer. At the mediation, the Acting Secretary and Defendant Schwalb reached a settlement in principle to resolve all claims against Defendant Schwalb.

3. The proposed Consent Order and Judgment explains how the Acting Secretary and Defendant Schwalb agreed that Defendant Schwalb will pay \$136,363.64, consisting of disgorged profits, from November 9, 2016 to November 28, 2016.

4. The proposed Consent Order and Judgment also acknowledges that prior to this litigation, Defendant Schwalb paid \$1,407,504 to the Fund, consisting of \$1,385,000 in principal losses to the Fund (Counts Six and Nine of the Complaint) and \$22,504 in lost opportunity costs to the Fund.

5. The proposed Consent Order and Judgment also enjoins Defendant Schwalb from violating Title I of ERISA, from serving as a fiduciary, trustee, or administrator to any ERISA-covered Plan, and from acting as a service provider to the Fund.

6. Defendant Schwalb and the Acting Secretary both signed the proposed Consent Order and Judgment.

WHEREFORE, for all the reasons set forth herein and in the accompanying *Memorandum in Support of the Acting Secretary's Motion to Approve Consent Order and Judgment*, the Acting Secretary respectfully requests this Court enter and approve the Consent Order and Judgment.

Respectfully submitted,

SEEMA NANDA
Solicitor of Labor

CHRISTINE Z. HERI
Regional Solicitor

/s/Lydia J. Faklis
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